IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 671 OF 1995

Shri Vithoba Akoba Pisal
Age 59 years,
Occ: Retired School Teacher,
R/o. Pimpari, Tal: Koregaon
Dist. Satara ....Petitioner.

V/s

The State of Maharashtra ....Respondent.

Mr. M.S. Mohite for the petitioner.

Ms. M.M. Deshmukh, APP for the State.

CORAM: V.M. KANADE, J.

DATE: 9th January, 2006

ORAL JUDGMENT:

1. The petitioner is challenging the show-cause notice issued by the Judicial Magistrate, First Class, Koregaon under section 250 of the Criminal Procedure Code, asking him to show cause why he should not be directed to pay reasonable compensation to the accused for initiating baseless prosecution against him and also the notice which was issued under section 344 of the Criminal Procedure Code, asking him to show cause why he should not be tried summarily for giving false evidence on oath.

2. Rule, in this matter, was granted and the interim relief in terms of prayer clause (b) was granted on 5/7/1995.

3. The petitioner is the original complainant in Regular Criminal Case No.87 of 1991 which is registered under sections 324, 504 and 506 of the Indian Penal Code. The prosecution case in brief was that the accused had damaged the common wall and had assaulted the petitioner. The J.M.F.C. by his judgement and order acquitted the accused. He, however, issued the aforesaid show-cause notices against the petitioner.

4. The learned Counsel appearing on behalf of the petitioner has taken me through the judgment and order of the J.M.F.C., Koregaon. The Trial Court acquitted the accused on the basis of the certificate which was issued by the Medical Officer P.H.C. Wathar in which it was stated that the petitioner had sustained injuries due to fall from the wall. In his evidence, the complainant i.e. the petitioner herein stated that the accused lifted him and threw him down on the heap of stones because of which he sustained injury on his leg. The Trial Court disbelieved his evidence.

P.W. 2 - Mohan Godse who was examined by the prosecution turned hostile. The Trial Court also relied on the admission which was given by the petitioner in his cross-examination and on the basis of the said admission acquitted the accused.

5. In my view, there was no occasion for the trial court to have issued the show cause notice under section 250 or under section 344 of the Criminal Procedure Code. The case of the complainant was disbelieved on account of a statement made by him in the cross-examination and, after appreciating the evidence on record, the Trial Court acquitted the accused. In my view, the provisions of section 250 of the Criminal Procedure Code or the provisions of Section 344 of the Criminal Procedure Code are prima facie not attracted from the perusal of the judgment and order passed by the Trial Court. There was thus no occasion for the Trial Court to have issued these show-cause notices. The petitioner is a retired primary teacher. He had filed a complaint against the accused on the ground that the accused had assaulted him and had thrown him from the common wall, as a result of which he had sustained injuries. It was open for the Court to disbelieve the testimony of the complainant and to acquit the accused which course of

action was taken by the Trial Court. However, there was no reason to issue the aforesaid two show-cause notices. Under the circumstances, the show-cause notices issued by the Trial Court under section 250 of the Criminal Procedure Code and Section 344 of the Criminal Procedure Code are quashed and set aside.

6. Petition is allowed. Rule is made absolute in the above terms.

V.M. KANADE, J.